

January 28, 2004

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, January 28, 2004, at 6:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. The following members were present:

PABLO CUEVAS, Election District #1
CHARLES W. AHREND, Election District #2
DEE E. FLOYD, Election District #3
WILLIAM B. KYGER, JR., Election District #4
MICHAEL A. BREEDEN, Election District #5

Also present:

JOSEPH S. PAXTON, County Administrator
G. CHRIS BROWN, County Attorney
STEPHEN G. KING, Deputy County Administrator
JAMES L. ALLMENDINGER, Director of Finance
JENNIFER M. HOOVER, Director of Public Works
WILLIAM L. VAUGHN, Director of Community Development
DOTTIE L. BOWEN, Deputy Clerk
DONALD F. KOMARA, Resident Engineer
Virginia Department of Transportation

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CALL TO ORDER
PLEDGE OF ALLEGIANCE AND INVOCATION.

Chairman Ahrend called the meeting to order at 3:00 p.m.

Public Works Director Hoover led the Pledge of Allegiance, and Supervisor Kyger gave the Invocation, including a special prayer for Zoning Administrator Diana Stultz, whose husband passed away on this date.

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APPROVAL OF MINUTES.

After correcting two typing errors, on motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the Minutes of the Organizational Meeting held on January 14, 2004.

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TRANSPORTATION DEPARTMENT.

The Board heard Mr. Komara's report on the activities of the Transportation Department.

Supervisor Breeden arranged to meet with Mr. Komara and his staff at Elkton Middle School, the location of a recent traffic accident, to consider possible improvements at that location.

Mr. Paxton advised that he would be meeting with Mr. Komara, School Board representatives and other affected officials to discuss the upcoming primary election and how it will be handled in the event of inclement weather.

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COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Mr. Paxton's staff report dated January 23, 2004, concerning development of the County-owned Route 11 North property, landfill tipping fees, renovation of the District Courts building, activities of the Emergency Communications Center Board, Upper Valley Regional Park Authority, Social Services activities, and 2004 legislative matters.

Following a discussion concerning naming of the Route 11 North property in which Board members asked that the name clearly identify the property and its purpose, Mr. Paxton advised that suggested names would be brought to the Board for consideration at a future meeting.

Mr. Paxton advised that the bid submitted by Harrisonburg Construction for the renovations to the 5th floor, Harrison Plaza, Emergency Communications Center, was significantly above the estimate of \$90 per square foot anticipated by Hays, Seay, Mattern & Mattern, the consultant. He noted that the City of Harrisonburg rejected this bid and directed that the bid be restructured in order to provide more cost-effective proposals. On motion by Supervisor Floyd, seconded by Supervisor Cuevas

and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board concurred with the City's action.

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COUNTY ATTORNEY'S STAFF REPORT.

Received and reviewed Mr. Brown's staff report dated January 22, 2004, including information concerning hiring of Assistant County Attorney Kim Gutterman, lease with Virginia Department of Forestry, Ordinance amendments to be heard at 7:00 p.m., proposed Code amendments to bring County into compliance with International Fire Code, tax issues, litigation, and the Freedom of Information Act.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following three-year lease between the County and the Department of Forestry for office space located at the County's Pleasant Valley Road facility.

Deed of Lease

This Deed of Lease (the "Lease") is dated the _____ day of _____, 2003, between Rockingham County, as Grantor (the "Landlord"), and the COMMONWEALTH OF VIRGINIA, Department of Forestry, as Grantee (the "Tenant"), with approval of the Governor pursuant to Section 2.2-1149 of the Code of Virginia (1950), as amended.

WITNESSETH

1. PREMISES. For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the Landlord leases to the Tenant the following property or premises (the "Premises"), together with full rights of ingress and egress, in the City of Harrisonburg, Virginia. The Premises are more particularly described as:

Office space in a County facility that includes 3 rooms with approximately 360-sq. ft. located at 975 Pleasant Valley Road, Harrisonburg, VA 22801. Parking space provided per the Americans with Disability Act 1990 and other parking is included.

A sketch of the floor plan of the Premises is attached hereto as Exhibit A.

2. USE OF PREMISES. The Premises are to be used and occupied by the Tenant for office space or for such purpose or purposes as the Tenant may now or hereafter be empowered or authorized by law to use same.

3. TERM.

- (a) The initial term of this Lease (the "Initial Term") shall be three (3) year(s), beginning on January 1, 2004, (the "Commencement Date") and terminating on December 31, 2006 (the "Termination Date").
- (b) The Landlord warrants that the Landlord alone, at the time this Lease is executed, has the right to lease the Premises, without the consent of any other party. It is expressly understood and agreed that this covenant by the Landlord constitutes a warrant. If the Landlord does not have this right, then the Tenant, in addition to any other remedy available at law or in equity, may immediately declare this Lease null and void from its inception and of no force and effect, without notice. In such event, no rent shall accrue or be deemed to have accrued for the term of this Lease, or for any part of the term.

4. RENT.

(a) The Tenant shall pay the Landlord the sum of Ten Thousand Two Hundred Dollars (\$10,200.00) as rent (the "Rent") for the Initial Term which shall be paid in arrears, in installments of \$250/mo-FY'03-04; \$275/mo-FY'04-05; \$300/mo-FY'05-07, at the end of each month. Rent is due and payable beginning on January 1, 2004, and each month thereafter for the Initial Term, including any renewal or extension thereof. The payment of all Rent shall be made payable to County Treasurer and mailed to:

(Name) County of Rockingham
(Address) Attn: County Administrator
P.O. Box 1252
Harrisonburg, VA 22803,

or to such other person or entity or at such other address as the Landlord may designate from time to time by written notice to the Tenant.

5. POSSESSION AND CONDITION OF PREMISES.

(a) The Landlord shall deliver quiet possession of the Premises to the Tenant on the Commencement Date and shall provide quiet enjoyment of the Premises to the Tenant during the Initial Term, and any renewals or extensions thereof.

(b) On the Commencement Date, the Landlord shall deliver the Premises to the Tenant in good repair and in a condition suitable to the use for which it is leased.

(c) The Landlord, and its employees, agents and contractors, shall have the right to enter and pass through any part of the Premises, without prior notice, only in the case of an emergency. If the Landlord, or the Landlord's employees, agents or contractors, must enter the Premises in the case of an emergency, then as soon as practicable before or after such emergency entrance, the Landlord, or the Landlord's agent, shall contact Department of Forestry (Telephone #434-977-5193).

(d) The Landlord covenants that (i) the Premises and the building of which the Premises (the "Building") forms a part have been inspected by an Asbestos Inspector licensed by the Virginia Department of Professional and Occupational Regulation and the Building and the Premises are free of friable asbestos that is not managed under a management plan prepared by an Asbestos Management Planner licensed by the Virginia Department of Professional and Occupational Regulation; and (ii) any friable asbestos discovered in or on the Building or the Premises shall be promptly and properly removed by the Landlord, at the Landlord's sole expense, in compliance with applicable federal, state and local laws and regulations, provided that, if the asbestos was introduced into the Premises by Tenant, the cost of the removal thereof shall be the Tenants expense.

6. MAINTENANCE.

(a) The Landlord warrants that on the Commencement Date, the Premises and all its equipment, including the plumbing, heating, ventilation and air conditioning equipment and systems shall be in good repair and good working order.

(b) The Landlord shall equip the Premises and perform all alterations, replacements, improvements, decontamination, and additions to the Premises and the equipment upon the Premises, at the Landlord's expense, as shall be necessary at any time during the Initial Term of this Lease, or any extension or renewal thereof, to comply with the provisions of Federal, State and local laws and regulations pertaining to health, safety, public welfare, and environmental protection, including laws and regulations pertaining to asbestos, carbon monoxide, polychlorinated biphenyls, urea formaldehyde, lead paint, radon, petroleum product storage tanks, and freon, regardless of the effective date of law or regulation unless the Premises are grandfathered from such laws or regulations. This subsection shall not apply if the necessity for compliance with these laws arises from a grossly negligent or willful act of the Tenant or its employees and the Tenant is found by a court of competent jurisdiction to be liable for such acts under the Virginia Tort Claims Act.

(c) It shall be the sole responsibility and obligation of the Landlord, at its expense and in accordance with applicable laws, technical publications, manuals and standard procedures, to (i) properly maintain, repair and replace all the structural portions of the Premises, including foundation, sub-floor, structural walls and roof, as well as to keep the Premises and all equipment and non-trade fixtures in good working order and to perform any required repairs, replacement and maintenance, and (ii) keep all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature affixed to or serving the Premises in good repair, condition and working order. All equipment and systems shall be maintained to provide reliable, energy efficient service, without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. As used herein, the word "repair" shall be deemed to include replacement of broken or cracked glass.

(d) All other necessary or required maintenance, repairs and replacements to the Premises and common areas shall be the sole responsibility and expense of the Landlord. The Landlord's maintenance

responsibilities shall include the supply and replacement of all supplies, materials and equipment necessary for such maintenance.

(e) The Landlord shall not be obligated to make any repairs to the Premises due to damage caused by the grossly negligent or willful acts of the Tenant, or its agents, employees, or contractors.

(f) If the Landlord fails to keep, repair and maintain the Premises and all plumbing, heating, air conditioning, electrical and mechanical devices, appliances and equipment of every kind or nature affixed to or serving the Premises in good repair, condition and working order as provided in this Section, then the Tenant, at its option, may either immediately terminate this Lease and all obligations hereunder, or proceed to make, or cause to be made, such upkeep, repair and maintenance, at the Landlord's expense. The Tenant may deduct the cost thus incurred in fulfilling the Landlord's obligations under this Lease from future Rent payments and/or may collect the cost from the Landlord in any manner provided by law. Furthermore, the Tenant shall be entitled to deduct from the rent, or any installment thereof, the per diem rental for each day that the Premises are rendered unsuitable for use as a result of the breakdown or malfunction of any equipment which the Landlord has herein agreed to keep, repair, and maintain; provided, however, that this deduction from the Rent shall not commence until the first day after the Landlord has been given notice (which may be oral) of the breakdown or malfunction. No notice of termination shall be given under this Section if the Landlord has physically commenced such repairs or is causing such repairs to be made, and such repair work is being diligently and continuously pursued to completion in a good and workmanlike manner.

7. DAMAGE OR DESTRUCTION OF THE PREMISES.

(a) If the Premises are damaged by fire, lightning, windstorm, tornado, earthquake, civil disturbance, flood, acts of nature or other casualty loss, and, in the reasonable opinion of the Tenant, the Premises are thereby rendered untenantable or unusable for the Tenant's purposes, this Lease shall immediately terminate, at the option of the Tenant, upon written notice to the Landlord.

(b) If the Premises are damaged by fire or otherwise, but in the reasonable opinion of the Tenant is not rendered totally untenantable and unusable, upon being notified to do so by the Tenant or its duly authorized agent, the Landlord shall repair and restore the Premises as promptly as possible to their former condition, in which event there shall be a proportionate abatement of all Rent and other payments otherwise due to the Landlord under the terms of this Lease, for the period during which the said repairs and restoration are being completed, for that portion of the Premises not substantially usable by the Tenant during such period. If the Landlord fails to make all repairs, replacement, restoration, or renovation as required in this subsection, or as otherwise required in this Lease where no other remedy is expressly provided, within a reasonable time after written notice to the Landlord, then the Tenant may choose either option (i) or (ii) below:

(i) The Tenant may undertake with its own resources to repair, replace, restore or renovate the Premises and may deduct the reasonable costs of the repairs, replacement, restoration, and renovation from the Rent or other payments otherwise due to the Landlord under the terms of this Lease, or any renewal or extension thereof, or the Tenant may collect all such costs from the Landlord in any manner provided by law, if the Landlord has not paid for such repairs within 30 days after receipt of billing therefor from the Tenant; or

(ii) The Tenant may terminate this Lease by giving fifteen (15) business days written notice to the Landlord. No notice of termination shall be given by the Tenant under this subsection if the Landlord, or its agents, has physically commenced repairs, replacement, restoration or renovation, and the work is being diligently and continuously pursued to completion in a professional and workmanlike manner.

8. ALTERATIONS BY THE TENANT.

The Tenant, at its sole cost and expense, may make alterations and additions to the Premises as the Tenant deems proper. The Tenant, however, shall not make any structural alterations of the roof, foundation or exterior walls without the prior written consent of Landlord, unless made pursuant to Section 7(b)(i). The Tenant, at its sole cost and expense, may install fixtures, partitions and make such other improvements as the Tenant may deem proper and the title and ownership of materials used in such alterations and additions, and all fixtures, partitions, and other improvements made and/or installed by the Tenant shall remain in the Tenant. Upon termination of this Lease, the Tenant may, at its option, remove the fixtures, partitions and other improvements made under this Section, in which event any damage to the Premises caused by removal, other than nominal damage (such as screw holes, bracket marks, etc.) shall be repaired by the Tenant at its expense. If the Tenant elects not to remove the improvements, it shall have no further responsibility for them or their removal.

9. UTILITIES AND SERVICES; INSURANCE; TAXES.

(a) The Landlord shall provide, at the Landlord's expense, the following utilities and services for the Premises: heating and air-conditioning as conditions require, electricity, water and sewer, janitorial, and interior trash removal to the Premises. If the Landlord or Landlord's agent interrupts, discontinues or causes the interruption or discontinuation of any of these utilities or services, then the Tenant, in addition to any other remedy available under the law, shall be entitled to deduct from the Rent, or other payments otherwise due to the Landlord under the terms of this Lease or any renewal or extension

thereof, either (i) the per diem rental for each day that the Premises are rendered unsuitable for use due to the Landlord's failure to provide such utility or service, or (ii) the actual cost to provide the utility or service if not provided by the Landlord.

(b) The Landlord shall be responsible for all real estate taxes or charges in lieu of taxes applicable to the Premises.

(c) The Landlord, at Landlord's expense, shall keep the Premises and the Building insured against damage by fire, lightning, windstorm, tornado, earthquake, civil disturbance, flood, acts of nature and casualty loss, under a broad form extended coverage or similar property loss policy. The policy shall cover at least eighty percent (80%) of the replacement cost of the Premises and the Building. In addition, the Landlord shall maintain broad form general commercial liability insurance sufficient to ensure reasonable financial responsibility in the event of liability for injury, loss or damage at the Premises, the common areas and facilities.

10. CONDITION OF COMMON AREAS.

The Landlord, at the Landlord's sole expense, shall maintain in a good, clean and safe condition, all common areas and common facilities, including all hallways, walkways, parking areas, and all related exterior lighting, to be used by the Tenant in common with other tenants. If the Landlord fails to maintain such areas or facilities in a good, clean and safe condition, or to make all repairs and/or improvements within a reasonable time after written notice, then the Tenant may terminate this Lease or proceed to make repairs or improvements, pursuant to the provisions of Section 6(f).

11. ACCESSIBILITY BY PERSONS WITH DISABILITIES.

(a) In addition to any other requirements or covenants in this Lease, and at all times during the Initial Term and during any renewals or extensions thereof, the Landlord covenants that, as to the Premises, it has fully complied, or will comply, with (i) the facilities accessibility laws, regulations and standards required by the "Americans With Disabilities Act of 1990" (the "ADA"), including Titles II and III thereof, and the regulations and standards promulgated thereunder, including the regulations promulgated by the U.S. Department of Justice (28 CFR Chapter 1, Part 36 and the Standards for Accessible Design Pt. 36, App. A-entitled "ADA Accessibility Guidelines for Buildings and Facilities"), as amended, and (ii) the minimum requirements of the Virginia Uniform Statewide Building Code (VUSBC), Volume I-New Construction, as amended, pertaining to access by the physically handicapped and aged persons, including Chapter 11 ("Accessibility") of said VUSBC, which, in part, incorporates the regulations and referenced standards of the U.S. Department of Justice identified above, to the fullest extent required by law, as if the Premises were newly constructed. To the extent the minimum requirements of the VUSBC are more restrictive than applicable federal requirements, VUSBC shall control. The Landlord further covenants that the Premises, as well as parking lots, entrances, common areas, restrooms and passageways, will be so maintained as to cause the Tenant to be and remain in compliance with said ADA and all regulations promulgated thereunder applicable to handicapped accessibility, as the same are applicable to the Tenant as a "public entity" and as the same would be applicable to the Tenant if a private entity operating a place of public accommodation (except as noted below with respect to trade fixtures). The Landlord further covenants that, following the date of execution of this Lease, all alterations of the Premises and other facilities areas, including common areas and parking facilities, that shall be undertaken by the Landlord, to the extent the same could otherwise affect the accessibility/usability of the Premises by the disabled, shall be undertaken in such a manner that, to the maximum extent feasible, the path of travel to the altered area or facilities or to the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities and that the ADA and the regulations and standards promulgated thereunder and the VUSBC are fully complied with to the extent required by law and as herein provided. Should the Tenant discover that an element of the Premises, or the construction or design of the Premises, as well as the other facilities areas noted above, or alterations thereto, are not in compliance with the requirements herein set forth, including the referenced standards or guidelines pertaining to the ADA, the Tenant shall promptly notify the Landlord (or the Landlord's Agent) in writing detailing both the requirement and the noted deficiency and specifying the action required to bring about compliance. Should the Landlord fail within thirty (30) calendar days following such notice to comply or to propose in writing an alternative for compliance which the Tenant deems acceptable, or, alternatively, fail to convince the Tenant that compliance is not required, either because such accommodation as would otherwise be required would constitute an undue hardship when measured against the financial resources of the Landlord or because the facilities are nevertheless accessible and usable by individuals with disabilities, then Tenant may undertake with its own resources to accomplish the work needed to achieve such compliance and may deduct the reasonable costs of such accommodation from the Rent or other sums then otherwise due the Landlord under the terms of this Lease or any renewal or extension thereof, or may terminate this Lease by giving three (3) months written notice to the Landlord.

(b) Without in any way limiting the foregoing requirements, the Tenant has identified below certain minimum design considerations and general handicapped accessibility requirements which are applicable to the Premises and related facilities, unless marked "Not Applicable";

(i) If public or private parking is provided, at least one accessible parking space, properly designated for handicapped parking, shall be provided as close as possible to an accessible route to the primary Building entrance.

(ii) Walks used as accessible routes to the Premises shall comply with applicable accessibility standards.

(iii) An accessible primary entrance into the Building shall be at grade or ramped to grade in accordance with applicable accessibility standards.

(iv) At least one route (consisting of walkways, corridors, doors and common areas), from the location of accessible parking spaces into the Premises, shall be accessible.

(v) If support areas within the Building (e.g. lunch rooms, meeting rooms, etc.) are used by the Tenant, its employees or the public, such areas shall be accessible.

(vi) If the Tenant occupies floors other than the main floor, at least one accessible elevator shall be provided.

(vii) An accessible unisex restroom shall be provided, or, in the alternative, separate male and female accessible restrooms; and, in either case, with accessible equipment.

(viii) All corridors, doors and spaces within the Premises and used by the public or employees of Tenant shall be accessible.

(ix) Where appropriate, directional signs complying with the standards shall be provided directing handicapped persons to an accessible route or entrance to the Premises.

(c) The foregoing provisions of this Section, as applied to the Landlord, shall not apply to trade fixtures installed by Tenant or Tenant's layout of such trade fixtures.

12. DISCLOSURES; NON-WAIVER; APPROPRIATIONS.

(a) The Landlord understands and acknowledges that the Tenant is an agency of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences on or about the Premises, including product liability, the Commonwealth and the Tenant are either (i) constitutionally immune (or partially immune) from suit, judgment or liability, (ii) insured, or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

(b) The Landlord understands and acknowledges that the Tenant has not agreed to provide any indemnification or save harmless agreements running to the Landlord. No provision, covenant or agreement contained in this Lease shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia, or of the Tenant, from tort or other liability.

(c) This Lease shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Richmond, Virginia, as the venue for any action instituted pursuant to the terms of this Lease.

(d) Notwithstanding any other provision of this Lease, if the Tenant shall cease to exist, and is not replaced by a successor entity with similar powers and purposes, or its powers and authority are limited so as to not permit the continued use of the Premises for the purpose and use for which same are leased, then this Lease and all responsibility or obligations of the Tenant under this Lease shall terminate. In such event, the Tenant will endeavor to give as much notice as is reasonably possible of the event triggering the termination of this Lease and the anticipated termination date, but failure to give such notice shall not affect the termination.

(e) Agencies of the Commonwealth of Virginia cannot expend funds unless appropriated by the Virginia General Assembly and may not obligate a future session of the Virginia General Assembly. Therefore, notwithstanding any provision in this Lease to the contrary, if any session of the Virginia General Assembly fails to appropriate funds for the continuance of this Lease, this Lease and all obligations hereunder shall automatically terminate upon depletion of the then currently appropriated or allocated funds.

13. REPORT OF OCCUPANCY.

(a) The Tenant shall, within fifteen (15) days after receipt of a written request by the Landlord, submit to the Landlord, or its designee, a written Report of Occupancy specifying: (i) the date of possession of the Premises by the Tenant and the date on which the Lease terminates, (ii) whether this Lease is in full force and effect, (iii) the annual Rent, (iv) whether there have been any modifications to the Lease, and if there have been, a description of all such modifications, and, (v) whether the Tenant has knowledge of any default hereunder on the part of the Landlord, or if it does have such knowledge, a description of any such default.

(b) The issuance of a report requested under subsection 13(a), or any errors or omissions in such report: (i) shall not operate as an estoppel against either the Commonwealth of Virginia or the Tenant, (ii) shall not form or provide any basis for liability against the Commonwealth or the Tenant, and (iii) shall not

operate as a waiver of any rights or defenses that may be available to the Commonwealth or the Tenant either at that time or in the future.

14. CONDEMNATION.

(a) The Landlord shall give immediate notice to the Tenant of any discussions, offers, negotiations or proceedings with any party regarding condemnation or taking of any portion of the Premises.

(b) In the event that any portion of the Premises, or any portion of the Building, is taken by eminent domain, or sold to the holder of such power pursuant to a threatened taking, this Lease shall terminate effective as of the date of the taking. The date of taking shall be the earlier of: (i) the date on which title vests in the condemning entity or (ii) the date on which the condemning entity takes possession. In the event of a taking, the Tenant assigns to the Landlord any rights that the Tenant may have in and to any portion of a condemnation award, but such an assignment shall exclude any portion that may be due for, or attributed to, the Tenant's fixtures, moving expenses and allowances.

15. SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT. Upon request by the Landlord, the Tenant agrees to execute a Subordination, Attornment and Non-Disturbance Agreement that substantially conforms to Exhibit 1, attached hereto, provided, however, that all such agreements are subject to approval by the Tenant and the Office of the Attorney General of Virginia.

16. TERMINATION.

(a) Unless otherwise terminated as provided herein, a prior written notice of at least three (3) months shall be given by the Tenant should it desire to terminate this Lease and vacate the Premises at the end of the Initial Term, or any renewal or extension thereof. Subject to the Tenant's option to renew this Lease, if any, should the Landlord desire to terminate the Lease and take possession of the Premises at the end of the Initial Term, or any renewal or extension thereof, a prior written notice of at least three (3) months shall be given by the Landlord. Unless and until such notice is given by either party, this Lease shall automatically renew and continue in force from year to year ("renewal term") at the same Rent that was payable during the last or prior month of this Lease, or any renewal or extension thereof, and subject to all the terms, conditions and covenants herein contained. During any renewal term, the Tenant, at its option, may terminate this Lease at any time upon at least three (3) months written notice to the Landlord.

(b) If the Tenant shall continue to occupy of the Premises after the termination date specified in a proper notice to terminate as provided in Section 16(a) (a "holdover"), such holdover shall be deemed a tenancy from month-to-month upon the same Rent and other terms and conditions as existed immediately prior to the commencement of the holdover. The Landlord shall have the right to regain possession of the Premises in any manner provided by law, exclusive of self-help remedies. Possession of the Premises by the Tenant in accordance with the provisions of Section 16(a) shall not be deemed a holdover.

(c) At the termination of this Lease, the Tenant will peaceably deliver the Premises in as good condition as when it was formally accepted, nominal damage and normal wear and tear excepted, and subject to any agreement by the Landlord to make repairs and restoration as provided elsewhere in this Lease.

(d) Once notice of termination has been properly given by either party to this Lease, the Landlord shall have the right to post a notice that the Premises are for rent and may show the Premises to any person desiring to rent the same during the business hours maintained by the Tenant for the Premises, and only at such other times as the Tenant may permit.

17. NOTICES.

(a) All notices to the Tenant required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Tenant addressed to:

(Name) General Services
(Address) VA Department of Forestry
900 Natural Resources Dr, Suite 800
Charlottesville, VA 22903

(b) All notices to the Landlord required or permitted under this Lease shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Landlord addressed to:

(Name) County Administrator, Rockingham County
(Address) P. O. Box 1252
Harrisonburg, VA 22803

(c) Where, under the terms of this Lease, a notice is sent by certified U.S. mail, postage prepaid, return receipt requested, such notice shall be deemed to have been given as of the date of mailing such notice. Each party to this Lease shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in Section 17(a) or Section 17(b), as appropriate.

(d) Where, under the terms of this Lease, a notice is required or permitted to be sent by certified U.S. mail, postage prepaid, return receipt requested, and such notice is not sent in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

18. BINDING EFFECT; AMENDMENTS.

The covenants, agreements, and rights contained in this Lease shall bind and inure to the respective heirs, personal representatives, successors and assigns of the Landlord and the Tenant. This Lease constitutes the entire, full and complete understanding and agreement between the Landlord and the Tenant, and all representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Lease and shall be null, void and without legal effect. Neither party, nor any agent of either party, has any authority to alter, amend or modify any of the terms of this Lease, unless the amendment is in writing and executed by all parties to this Lease with the same formality as this Lease. This Lease shall not be effective or binding unless and until signed by all parties and the Tenant obtains the recommendation of the Virginia Department of General Services and the approval of the Governor of Virginia, or his designee, as required by Section 2.2-1149 of the Code of Virginia (1950), as amended.

19. DEFAULT.

(a) The termination of this Lease by the Tenant pursuant to the provisions contained herein shall not be a default hereunder.

(b) If either party shall breach any provision of this Lease, the non-breaching party shall give written notice thereof to the breaching party. The breaching party shall have thirty (30) days from the receipt of the notice to cure the breach and, if not so cured, the non-breaching party may, at its option, exercise such rights as may exist at law or in equity, except that the Landlord shall not take possession of the Premises by any self-help remedy. The provisions of this subsection shall not be construed as imposing any additional obligations on the non-breaching party to the extent that this Lease permits the non-breaching party to take certain actions as a result of a breach by the other party.

20. PRESUMPTIONS. No presumption shall be created in favor of or against any of the parties to this Lease with respect to the interpretation of any term or provision of this Lease due to the fact that this Lease, or any part hereof, was prepared by or on behalf of one of the parties hereto, as may be evidenced by the disclosure on the face of this Deed of Lease made pursuant to Virginia Code Section 17.1-223.

21. ASSIGNMENT. The Tenant may not assign this Lease, or sublet the Premises, without the written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

22. HEADINGS. The heading of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.

23. ADDITIONAL PROVISIONS. This Lease is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments, exhibits and riders, which are hereby incorporated into this Deed of Lease:

Attachments: None

Exhibits: Subordination, Non-Disturbance, and Attornment

Riders: None

_____ NONE (Check if NONE)

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals.

LANDLORD: County of Rockingham

By: _____
Title: County Administrator

TENANT: Commonwealth of Virginia
Department of Forestry

By: _____
Title: Assistant State Forester

STATE OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Deed of Lease was acknowledged before me this _____ day of _____, 20__ by _____ acting in his/her capacity as _____ of County Administration on behalf of the County of Rockingham.

My commission expires _____
Notary Public

STATE OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Deed of Lease was acknowledged before me this _____ day of _____, 20__ by _____ acting in his/her capacity as Assistant State Forester of the Commonwealth of Virginia, Department of Forestry, on behalf of the agency.

My commission expires _____
Notary Public

RECOMMEND APPROVAL:
DIVISION OF ENGINEERING AND BUILDINGS
RECOMMEND APPROVAL:
DEPARTMENT OF GENERAL SERVICES

BY: _____ BY: _____
Director Director

APPROVED BY THE GOVERNOR: Pursuant to Section 2.2-1149 of the Code of Virginia (1950), as amended, and as the official designee of the Governor of Virginia, as authorized and designated by Executive Order _____ dated _____, I hereby approve the acquisition of the Premises pursuant to this Deed of Lease for and on behalf of the Governor of Virginia.

Date Secretary of Administration

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This Subordination, Attornment and Non-Disturbance Agreement is dated _____, 20__ by and between _____ and the Commonwealth of Virginia,
_____.

Whereas, by Deed of Lease (the "Lease"), dated _____, _____, as Landlord (the "Landlord"), demised certain property described as _____ (the "Premises") to the Commonwealth of Virginia, _____, as Tenant (the "Tenant"); and,

Whereas, _____ (the "Lender") is secured by a Deed Of Trust (the "Deed of Trust") upon certain property, of which the Premises forms a part (the "Property"), described in Exhibit A, which exhibit is attached hereto and made a part hereof; and,

Whereas, the Lender has requested that the Tenant execute a subordination and attornment agreement and the Tenant has agreed upon the condition that it simultaneously be provided with certain assurances that its tenancy under the Lease will not be disturbed.

Now, therefore, for and in consideration of the respective and mutual agreements herein set forth the parties agree as follows:

The Lender hereby expressly agrees that as long as the Tenant or its lawful successors or assigns shall continue to pay the rent as provided for in the Lease and otherwise comply with the terms and provisions thereof, neither the Lender nor its successors or assigns shall disturb the Tenant or its lawful assigns in its quiet possession of the Premises during the term of the Lease.

The Lender further agrees that the lien of the Deed of Trust shall not cover any of the Tenant's fixtures, alterations or improvements which the Tenant, under the terms of the Lease, is permitted to remove from the Premises.

The Tenant agrees that its rights under the Lease shall be subordinated to the lien of the Deed of Trust provided that the Tenant's tenancy shall not be disturbed nor shall the Lease be affected by any default under the Deed of Trust. The Tenant further agrees that, in the event of a foreclosure or other enforcement of the Deed of Trust, or sale in lieu thereof, it will attorn to any purchaser of the Property of which the Premises form a part, and recognize such purchaser as the Landlord under the Lease upon the

then executory terms and conditions of the Lease for the remainder of the term of the Lease, provided that such purchaser shall then be entitled to possession of the Premises subject to the provisions of the Lease.

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DEPUTY COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Mr. King's staff report dated January 23, 2004, concerning review of proposed 2004 State legislation.

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PUBLIC WORKS DIRECTOR'S STAFF REPORT.

The Board received and reviewed Ms. Hoover's staff report dated January 23, 2004, including information concerning progress on the sewer project for Route 11 North; Lilly Gardens; Countryside water system; Penn Laird Drive and Water Tower Road sewer; Lakewood/Massanetta Springs pump station, Spotswood High School waterline extension, WalMart water and sewer project, and the Three Springs back-up power.

Mr. Kyger asked if staff had contacted the residents of Countryside regarding the potential increase in water line size to serve the subdivision so that fire protection could be provided. Ms. Hoover advised that the intent is to poll the 16 residents to ask if they are willing to incur the additional project costs associated with providing fire protection (one benefit would be a reduction in their insurance premiums). Staff intends to send a letter to the residents within the next two weeks.

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COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Vaughn's staff report dated January 22, 2004, including information concerning I-81 Public-Private Transportation Act, priority projects underway, tabled requests, and upcoming requests.

On motion by Supervisor Breeden, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board made the following appointments to the McGaheysville Citizen Advisory Committee: Gary Burner, Keith Sheets, Kimberly Alexander, Everette Rodgers, Jolene Powell, Skip Wissinger, Kath Wissinger, Gene Hauze, Julie Kane, J.L. Hopkins, Donna

Dyer, Todd Dyer, Kitty Hensley-Snyder, Jackson Raines, and Chip Rothery.

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CENTRAL SHENANDOAH PLANNING DISTRICT COMMISSION REQUEST FOR COMMENT - FRIENDSHIP INDUSTRIES, INC., AND VALLEY PROGRAM FOR AGING SERVICES, INC.

On motion by Supervisor Floyd , seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; the Board endorsed requests to the Central Shenandoah Planning District Commission (CSPDC) for funding through FTA Section 5310 Program from Valley Program for Aging Services, Inc., and from Friendship Industries, Inc.

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COMMITTEE REPORTS.

The Board heard Committee reports.

On motion by Supervisor Kyger, seconded by Supervisor Floyd and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; as recommended by the Automobile Committee, the Board authorized the Fire & Rescue Department to purchase a hazardous materials vehicle from the only bidder, Betten Rol/Up, for \$59,960.

On motion by Supervisor Cuevas, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; as requested by the Registrar and recommended by the Finance Committee, the Board approved a supplemental appropriation as follows to fund the Democratic Presidential Primary. The State will be requested to reimburse all of the expenses.

Supplemental Appropriation: \$18,710 Electoral Board

GL Codes

\$ 1,200	001-01301-000-3109-000	Card Programming
1,200	001-01301-000-3500-000	Ballots
15,540	001-01301-000-3902-000	Election Officers
270	001-01301-000-5501-000	Mileage
<u>500</u>	001-01301-000-6001-000	(Boxes, Sue Farley, Supplies, Postage, Advertisement)
\$18,710		

On motion by Supervisor Cuevas, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD -

AYE; KYGER - AYE; as recommended by the Public Works Committee, the Board increased the landfill tipping fee to \$32 per ton, effective July 1, 2004. The Committee and staff are continuing to evaluate the feasibility of picking up white goods and bulk items at the container sites and will report their findings to the Board. If these additional services are approved, a small additional increase in the tipping fees may be necessary.

Mr. Paxton reported on a vacancy in the dentist position in the Health Department's Dental Program for Children. Local dentists will be contacted to see if these services can be handled locally until the position is filled.

In regard to the fraud program created by the State in the late 1990s, he noted that the County has been very successful in searching out fraud and gaining restitution from offenders. He pointed out that the funding for the fraud investigator has come primarily from the restitution of the program, not counting the future savings from payments that are not made to the ineligible clients. He advised the Board that the Attorney General recently advised the State Department of Social Services that it could no longer use the federal share of the restitution (as much as 2/3 of the amount) for this purpose. The effective date of this change is April 1, 2004. This change, if implemented, means that the County and City would have to fund between 50 and 67% of the position. He advised that he had spoken with Senator Allen's office regarding this matter and asked that emergency legislation be introduced to rectify the situation. The Senator and his staff are evaluating the best course of action, and the Director of Social Services is compiling data for the Senator's staff to research.

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PUBLIC HEARING - SPECIAL USE PERMITS.

At 7:00 p.m., Chairman Ahrend declared the meeting open for a Public Hearing on the following rezoning applications.

S04-04, request of David Eberly, 5042 Rawley Pike, Harrisonburg, for a stump grinding business (like use to sawmill) on property located on the north side of Rawley Pike (Route 33) approximately 1/2 mile west of Bank Church Road (Route 734) in Central Magisterial District, Election District #4, Zoned A-1. Tax map #92-(A)-65.

There were no requests to speak, and no opposition was expressed.

S04-05, request of David Eberly, 5042 Rawley Pike, Harrisonburg, for a second residence (for son) on property located on the north side of Rawley Pike (Route 33) approximately 1/2 mile west of Bank Church Road (Route 734) in Central Magisterial District, Election District #4, Zoned A-1. Tax map #92-(A)-65.

There were no requests to speak, and no opposition was expressed.

S04-06, request of Glenn E. Hoover, 9477 Cadet Road, New Market, for a second residence (for farm worker) on property located on the east side of Buckley Road (Route 890) approximately 8/10 mile north of Piney Woods Road (Route 619) in Plains Magisterial District, Election District #1, zoned A-1. Tax Map #41-(A)-39.

Supervisor Cuevas said it should be made clear that the residence could not be used for rental purposes, including non-rental to a farm worker. Mr. Brown noted that the conditions stated that the residence could not be used as rental property. Mrs. Hoover stated that the residence was to be for farm use only and no rent would be charged.

S04-07, request of Ronald & Eugenia Nelson, 2490 Saddle Trail, McGaheysville, for an agriculture and nature center on property located on the west side of Resort Road (Route 644) approximately 400 feet north of Red Cedar Lane (Route 1330) in Stonewall Magisterial District, Election District #5, zoned A-2. Tax Map #128-(A)-114A.

Mr. Nelson said the special use permit had expired, and he wished to request that it be approved again. He noted that the conditions were the same, including the access off Red Cedar Lane. Mrs. Nelson reiterated that the condition was included in the prior use permit but was omitted in the file.

David Cooley asked what Great Eastern planned to do with the poultry houses on the property. Mr. Breeden noted that they store building materials, lawn mowers, golf carts, etc., in those buildings.

Donald Huntly asked what the nature of the business would be.

Mrs. Nelson explained that it would be an agriculture and nature center to provide educational information for students, Massanutten visitors, and others.

Susan Gladwell asked where the property line would be drawn.

Mrs. Nelson said the activities would be on the 11 acres in the back of the property.

Chairman Ahrend closed the public hearing and called the regular session back to order at 7:18 p.m.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S04-04, request of David Eberly, 5042 Rawley Pike, Harrisonburg, for a stump grinding business (like use to sawmill) on property located on the north side of Rawley Pike (Route 33) approximately 1/2 mile west of Bank Church Road (Route 734) in Central Magisterial District, Election District #4, Zoned A-1. Tax map #92-(A)-65.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) VDOT reserves the right to require future entrance upgrades should conditions warrant.
- (3) Inasmuch as no sewage disposal facilities exist for this operation, in accordance with Health Department regulations, there shall be no water usage.
- (4) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (5) Total square footage allowed for on-premise advertising signs on private property shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
- (6) Off-street parking shall comply with the Rockingham County Code.
- (7) There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S04-05, request of David Eberly, 5042 Rawley Pike, Harrisonburg, for a second residence (for son) on property located on the north side of Rawley Pike (Route 33) approximately 1/2 mile west of Bank Church Road (Route 734) in Central Magisterial District, Election District #4, Zoned A-1. Tax map #92-(A)-65.

1. The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
2. Residence shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
3. VDOT reserves the right to require future entrance upgrades should conditions warrant.
4. This permit is contingent upon applicant obtaining an on-site sewage disposal system permit from the Health Department. A copy of said permit shall be presented to the Community Development Department prior to deed exception approval.
5. Manufactured home shall be skirted and the tongue removed, unless included in the skirting, within sixty (60) days from final inspection.
6. Residence shall not be used for rental purposes.
7. This residence shall not be occupied until a certificate of occupancy is issued from the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S04-06, request of Glenn E. Hoover, 9477 Cadet Road, New Market, for a second residence (for farm worker) on property located on the east side of Buckley Road (Route 890) approximately 8/10 mile north of Piney Woods Road (Route 619) in Plains Magisterial District, Election District #1, zoned A-1. Tax Map #41-(A)-39.

- (1) The use shall be located in substantial accordance with plot plan as approved by the Board of Supervisors.
- (2) Residence shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
- (3) VDOT reserves the right to require future entrance upgrades should conditions warrant.

- (4) In accordance with Health Department regulations because of the septic, this residence shall be limited to no more than three bedrooms.
- (5) If the residence is a manufactured home, it shall be skirted and the tongue removed, unless included in the skirting, within sixty (60) days from final inspection.
- (6) This residence shall not be used for rental purposes.
- (7) This residence shall not be occupied until a certificate of occupancy is issued from the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

On motion by Supervisor Breeden, seconded by Supervisor Cuevas and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; subject to the following conditions, the Board approved S04-07, request of Ronald & Eugenia Nelson, 2490 Saddle Trail, McGaheysville, for an agriculture and nature center on property located on the west side of Resort Road (Route 644) approximately 400 feet north of Red Cedar Lane (Route 1330) in Stonewall Magisterial District, Election District #5, zoned A-2. Tax Map #128-(A)-114A.

- (1) The use shall be located in accordance with plot plan as approved.
- (2) Buildings shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained. For any existing buildings a change of use building permit will be required in addition to permits for any new buildings and any other permits required by the Building Official.
- (3) This permit is contingent upon a site plan being submitted to and approved by the County. This business shall not begin operation until such time as site plan is approved.
- (4) As required by VDOT, the sight distance shall be shown on the site plan to enable that office to determine that adequate sight distance is available.
- (5) The entrance to this business shall be off Red Cedar Lane. A permit shall be obtained from VDOT for any work to be done on the right-of-way. A copy of said permit shall be submitted to the Community Development Department prior to obtaining final zoning approval for any building permits.
- (6) Off-street parking shall comply with the Rockingham County Code.
- (7) On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign. Any off-premise signs shall require further special use permit approval as well as meeting VDOT's outdoor advertising permit requirements.
- (8) This business shall not begin operation until such

time as a certificate of occupancy is issued by the County if required by the Building Official. If required, no certificate of occupancy shall be issued until all other conditions of this permit are met

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PUBLIC HEARING - ZONING ORDINANCE AMENDMENTS.

At 7:21 p.m., Chairman Ahrend declared the meeting open for a Public Hearing on the following proposed Zoning Ordinance amendments.

OA04-1 Chapter 17 of the Zoning Ordinance, Section 17-207 (l) and (m), Amend Revocation of Special Use Permits.

INTENT: To bring the section of the Rockingham County Code pertaining to special use permits into compliance with the State Code with regard to revocation of special use permits.

HISTORY: In the past, to revoke a special use permit for non-compliance, the County Code authorized the Zoning Administrator to send a letter to the holder of the special use permit giving 10 days notice of violation and intent to revoke. As a practice, the County’s Zoning Administrator took the matter to the Board of Supervisors informing them of the violation and intent to revoke the permit. This was not required by law, but since the Board approved the special use permit, staff referred the revocation to the Board. Recently the State took the same position and now requires a public hearing for the revocation of a special use permit.

OA04-2 Chapter 17 of the Zoning Ordinance, Section 17-200, Amend Powers and Duties Related to Zoning.

INTENT: To bring the County Code into compliance with the State Code pertaining to powers and duties of the Zoning Administrator.

OA04-4 Amend Chapter 17 of the Zoning Ordinance to define and include single-family dwellings with independent living quarters (Sections 17-6, 17-120.1), and to include the following zoning districts A1 (17-22 and 17-23), A2 (17-26), RS1 (17-30), RR1 (17-38), PG (17-48.2), R1 (17-50), R2 (17-54), R3 (17-58), R4 (17-64), and R5 (17-79).

INTENT: To allow a property owner to construct separate living facilities for members of their families. The intent of this ordinance is not for the construction of living facilities for rental purposes. These types of apartments are commonly referred to as “in-law quarters” since they are generally constructed for elderly parents. These quarters would have to be within a dwelling unit and not in a separate building on the same property. Anyone wishing to construct a separate building would have to meet the requirements for two dwellings on a parcel of land.

OA04-4 HISTORY: Under the current ordinance, people living in any district except R-2 or R-3 would be prohibited from constructing separate living quarters for a member of their family. Under the current law, separate living quarters would be an area that contained a kitchen, bathroom, and rooms that could be used for bedroom and living area. People have been permitted to have a summer kitchen if they did not have any one of the other items in the area. This, however, has created problems because after final inspections, internal remodeling created the bedroom and living area or, in the cases where some part of the kitchen (perhaps the stove) was not put in, after final inspection, wiring was brought back in for a stove. We have had many cases where second kitchens would be shown on the building plans, but either the contractor or property owner would mark it out saying they were not putting it in. During inspection stages, the second kitchen was found. In the last three months alone, we have had five cases where the home was constructed in such a manner as would allow for separate living area. In three of those cases, kitchens, bathrooms, bedrooms and living areas were visible, on the site visit.

Mr. Brown advised that the first two proposed amendments were "housekeeping matters." He explained that the third proposal would allow independent living quarters within a single-family dwelling in an R1 District. He noted that, technically, under the ordinance, these would be considered duplex housing, and this amendment would allow in-law quarters. He added that the owner of the property must reside at the property in order for it to be used in this manner. He noted that it also would allow a family member or an elderly or disabled person to live in the independent living quarters.

Mr. Floyd asked whether these living quarters could ever be rented. Mr. Brown said they could be rented when the elderly or disabled persons were no longer living there, but the owner of the property would have to continue to reside at the site.

There were no requests to speak on these proposals.

Chairman Ahrend closed the public hearing and called the regular session back to order at 7:34 p.m.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; as recommended by the Planning Commission (*Inasmuch as this amendment is to bring the County Code into compliance with State Code, staff recommends approval of the amendment. Additionally Section 17-207(m) is just a housekeeping item to correct a typographical error in the Code.*), the Board adopted the following.

OA04-1

AMENDMENT TO THE ZONING ORDINANCE
(CHAPTER 17) OF THE ROCKINGHAM COUNTY CODE

AMEND:

Sec. 17-207. Same – Requirements for special use permits.

(l) ~~Violation of conditions. Revocation of permit. The zoning administrator may revoke the special use permit upon failure of the owner or operator of the use to observe any requirements of law, any regulations or conditions imposed or approved by the board of supervisors or when the use is not constructed or implemented in accordance with the approved application.~~ If the Board of Supervisors determines that there has not been compliance with the terms and conditions of a special use permit granted by the Board, it may revoke the special use permit. No special use permit may be revoked except after public notice and hearing as provided by Virginia Code §15.2-2204 or its successor statute. When giving required notice to the owners, their agents or occupants of abutting property and property immediately across the street or road from the property affected, the notice may be by first-class mail rather than registered or certified mail. Following revocation of the permit, the Zoning Administrator shall notify the applicants by certified mail instructing them to cease operation and remove the use from the property within thirty (30) days to avoid legal action.

(m) Termination of use. An approved special use permit which has been put into use in accordance with the provisions of this section shall become void if the use ceases activity for more than two (2) years, unless approval of the permit specifically provides otherwise.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; as recommended by the Planning Commission (*Inasmuch as this amendment is to bring the County Code into compliance with the State Code, the Planning Commission recommendation is for approval.*), the Board adopted the following.

OA04-2

AMENDMENT TO THE ZONING ORDINANCE
(CHAPTER 17) OF THE ROCKINGHAM COUNTY CODE

AMEND:

Sec. 17-200. Same – Powers and duties related to Zoning.

The Zoning Administrator is authorized and empowered on behalf of and in name of the Board of Supervisors to administer and enforce the provisions set forth herein to include receiving applications, inspecting premises, and issuing certificates of occupancy for structures which are in conformance with the provisions of this chapter. The Zoning Administrator shall have all necessary authority on behalf of the Board of Supervisors to administer and enforce this chapter, including the ordering in writing of the remedying of any condition found in violation of this chapter, and the bringing of legal action, including injunction, abatement or other appropriate action of proceeding to insure compliance with this chapter. The Zoning Administrator is vested with all necessary authority on behalf of the Board of Supervisors to administer and enforce conditions attached to a rezoning, an amendment to a zoning map, or a special use permit in the same manner as described above for any violation of this chapter. The Zoning Administrator is further vested with all necessary authority on behalf of the Board of Supervisors to require a guarantee, satisfactory to the Board, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions of a rezoning, amendment to zoning map or special use permit, or a contract for the construction of the improvements and the contractor's guarantee in like amount and so condition, which guarantee shall be reduced or released by the Zoning Administrator upon the submission of satisfactory evidence that construction of such improvements has been completed. Failure to meet all conditions shall constitute cause for the County to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: AHREND - AYE; BREEDEN - AYE; CUEVAS - AYE; FLOYD - AYE; KYGER - AYE; as recommended by the Planning Commission (*While apartments or separate living quarters constructed for rental purposes should not be allowed in all districts, separate living quarters to care for a family member, or an elderly or disable person are appropriate. Allowing the independent living quarters will give the person living in there some freedom but still have them close enough for a person to care for them. While at some point, these quarters may be rented, limiting the size of them will limit the number of people living in a unit. This proposal requires that the independent living quarters be constructed for the use of a family member, person over 62 years of age or disabled, or a caretaker of someone living in the dwelling or independent living quarters.*), the Board adopted the following.

OA04-4

AMENDMENT TO ZONING ORDINANCE
(CHAPTER 17) OF THE ROCKINGHAM COUNTY CODE

AMEND:

Sec. 17-6. Definitions.

Dwelling, single-family with independent living quarters. A separate living unit located within a single-family dwelling and having direct interior access to the primary living unit.

Family, immediate: For the purpose of this chapter, immediate family shall mean parent, grandparent, child, grandchild, sibling, aunt or uncle.

Article VII. Use Regulations

Division 2. Structures

ADD:

17-120.1 Single family dwelling with independent living quarters.

- (a) Purpose and intent. The purpose of this section is to enhance the opportunities for independent living for family members, senior citizens and disabled persons, while maintaining the tranquility and integrity of single-family residential neighborhoods
- (b) **Requirements. Single-family dwellings with independent living quarters shall be permitted subject to the following provisions.**
 - (1) **No more than one (1) independent living quarter shall be permitted in any single-family dwelling;**
 - (2) **Independent living quarters shall not be metered separately for water or electric service or be separately connected to the public water or sewer system;**
 - (3) **No independent living quarters shall be constructed or occupied in any dwelling unless (a) the owner of record personally resides in such dwelling, (b) the independent living quarters are occupied by a person or group of persons meeting the definition of family in this ordinance, or (c) the independent living quarters or dwelling in which it is located is occupied by at least one (1) person who is sixty-two (62) years of age or older or disabled, or (d) the person living in the independent living quarters is the caretaker for either another person living in the independent living quarters or in the dwelling in which it is located;**
 - (4) **No independent living quarters shall have a floor area in excess of six hundred (600) square feet or twenty-five (25) percent of the floor area of the dwelling in which it is located, whichever is greater;**
 - (5) **Independent living quarters shall not be constructed for rental purposes nor shall any independent living quarters or dwelling in which it is located be used for purposes of transient occupancy or timeshare. For purposes of this section, the term “transient occupancy” shall mean occupancy for periods of less than ninety (90) consecutive days.**
- (c) **Permits.**
 - (1) **Applications for independent living quarters in a single-family dwelling shall be made to the County and must be signed by at least one (1) owner of record of the property upon which the independent living quarters shall be located.**
 - (2) **A statement on a form prescribed by the County, certifying that the occupants of either the dwelling or the independent living quarters are the owners of record of the property and that the occupants of the other section of the residence shall meet the requirements of subsection 17-120.1(b)(3) above.**

- (3) **After obtaining approval from the Zoning Administrator for the independent living quarters, a building permit shall be obtained to construct independent living quarters within the dwelling on the property and all inspections required by the County shall be obtained.**
- (4) **When constructed at the same time as the residence, neither the residence nor the independent living quarters shall be occupied until such time as a certificate of occupancy is obtained from the County. When the independent living quarters are put in an existing single-family dwelling, the independent living quarters shall not be occupied until a certificate of occupancy is obtained from the County.**

AMEND:

A-1 (Prime Agricultural) District:

Sec. 17-22. Permitted Uses.

(q) Single-family dwelling, single-family dwelling with independent living quarters, or manufactured home (not including manufactured home parks or subdivisions as follows:

(1) When located on a separate lot of less than six (6) acres which was created before January 1, 1992 or

(2) ~~Farm~~ Single-family dwelling, single-family dwelling with independent living quarters, or manufactured home provided that:

- a. The farming operation to be served by the single-family dwelling, single-family dwelling with independent living quarters, or manufactured home qualifies for land use taxation under the county code;
- b. The single-family dwelling, single-family dwelling with independent living quarters, or manufactured home is located on a parcel of fifteen (15) acres or more, in the same ownership as the qualifying farming operation;
- c. There are no dwellings or manufactured homes on the parcel; and
- d. The proposed single-family dwelling, single-family dwelling with independent living quarters, or manufactured home is to be occupied by the owner of the farming operation, or the full time tenant-operator of the same farming operation, or a full time employee of the same farming operation; or

(3) Replacement of single-family dwelling or manufactured home (1) replacing a residential dwelling or manufactured home for which a special use permit was obtained; or (2) replacing a residential dwelling or manufactured home inhabited by the same occupant since before April 1, 1985; and in either any such event the replacement dwelling or manufactured home:

- a. Is situated on or adjacent to the site of the dwelling or manufactured home being replaced;
- b. The number of residential dwellings or manufactured homes on the parcel, whether occupied or not, shall not be increased, except for a temporary period during construction of the replacement dwelling or placement of the replacement manufactured home where otherwise excepted in this chapter; and
- c. All other requirements of this chapter are met.

(4) The addition of independent living quarters to an existing single-family dwelling on said property.

Sec. 17-23. Special uses.

- (a) Single-family ~~residence~~ dwelling, single-family dwelling with independent living quarters, or manufactured home (not including manufactured home parks or subdivisions), not otherwise permitted, provided that, when sited after July 13, 1988 on a parcel of less than six (6) acres, created after July 13, 1988, such residential structure shall be no closer than three hundred (300) feet from an existing poultry facility; as defined in Section 17-173;

A-2 (General Agricultural) District:

Sec. 17-26. Permitted uses.

(af) Single-family dwelling with independent living quarters.

RS-1 (Rural Service) District:

Sec. 17-30. Permitted uses.

(y) Single-family dwelling with independent living quarters.

RR-1 (Residential or Recreational) District:

Sec. 17-38. Permitted uses.

(j) Single-family dwelling with independent living quarters.

PG (Planned Growth) District:

Sec. 17-48.2. Permitted uses.

(l) Single-family dwelling with independent living quarters.

R-1 (Low Density Residential) District:

Sec. 17-50. Permitted uses.

(j) Single-family dwelling with independent living quarters.

R-2 (Medium Density Residential) District

Sec. 17-54. Permitted uses.

(k) Single-family dwelling with independent living quarters.

R-3 (General Residential) District

Sec. 17-58. Permitted uses.

(t) Single-family dwelling with independent living quarters.

R-4 (Residential Planned Community) District

Sec. 17-64. Permitted uses.

(s) Single-family dwelling with independent living quarters.

R-5 (Planned Residential) District

Sec. 17-79. Permitted uses.

(g) Single-family dwelling with independent living quarters.

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INFORMATION ITEMS.

Received the following Information Items from the
County Administrator:

- a. Water report to State Health Department for
December 2003.
- b. Letter dated January 12, 2004, from U.S. Small
Business Administration regarding Virginia
Community Development Loan Fund.
- c. Letter dated January 14, 2004, from City of
Harrisonburg to Virginia Department of Rail and
Public Transportation, concerning possibility of
relocating a portion of the rail line in the City
of Harrisonburg to reduce the amount of traffic
through the JMU campus and the congestion created
on Reservoir and Main Streets (see Board action
of January 14, 2004).

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ADJOURNMENT.

By consensus, the Board adjourned the meeting at 7:35
p.m.

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Chairman